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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,032	10/01/2004	Eric Berreklouw	2001-1352	4666
466 7590 04/28/2008 YOUNG & THOMPSON 209 Madison Street Suite 500 ALEXANDRIA, VA 22314			EXAMINER GETTMAN, CHRISTINA DANIELLE	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 04/28/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/510,032

Applicant(s)

BERREKLOUW, ERIC

Examiner

CHRISTINA D. GETTMAN

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 59-85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 59-85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 59-61, 63-65, 70-77, 79, 80 and 85 rejected under 35 U.S.C. 102(b) as being anticipated by Abrams et al. (U.S. Patent No. 6,740,098). Abrams et al. disclose the invention substantially as claimed including an assembly with a stabilizer (ref. 500, Fig. 22) and an instrument (ref. 430 and 450, Fig. 22), the instrument being inserted into a passage surrounded by tissue, the stabilizer having one or more suction nozzles (ref. 510, Fig. 22) running in the shape of a loop (the apertures surround the instrument in the shape of a loop; since there are several apertures formed at different distances from the proximal end, it can be said that there are multiple suction nozzles in the shape of loops), the instrument having a head section (ref. 440 and 445, Fig. 22), the instrument and stabilizer each having a stop (ref. 485 is the stabilizer stop and ref. 430 is the instrument stop; the claims do not recite that when the two embodiments are in locked position, that they cannot move with respect to one another; a locked position is being taken to mean that two pieces are in a position relative to one another where no further movement in one direction is permitted; when ref. 435 abuts ref. 485, ref. 435 cannot move further downward with respect to ref. 485), the instrument being an applicator for applying a fixing device (ref. 410 and 420, Fig. 22), the stabilizer provided with a guide

on which the instrument stop is provided (the interior of the stabilizer, ref. 490, acts as a guide from the instrument and at the proximal end is located the instrument stop), the guide extending transversely to the loop (the exterior of the guide is provided with the suction apertures), the stabilizer having a working duct with one or more suction nozzles (ref. 515, Fig. 22), the guide being at the proximal end of the working duct (the most distal end of the working duct is more distal than the guide provided by ref. 490), one or more suction nozzles being in the axial, radially outward, radially inward, or obliquely outwards direction (it would be obvious to change the shape of the nozzles to get the desired effect) with respect to the loop shape, the suction nozzles adapted to be in the shape of the tissue (the recessed portion, ref. 495, accommodates tissue that has been vacuumed in towards the device), the fixing device having flange fingers (ref. 425, Fig. 22) there upon or pins (ref. 425), the applicator having an elongated support member (ref. 440) and an obstructing member (ref. 445), and the suction means having a suction line (ref. 515) that opens into a suction passage (the area right behind the suction apertures, ref. 510) which is formed in the interior of the suction body (ref. 500) which is in communication with a suction nozzle (ref. 515 hooks up with a suction nozzle). It is well-known in the art to add sensors and markers to medical instruments in order to provide for an additional guide, or navigation means, to locate the instrument within the body. Therefore, it would have also been obvious to one having ordinary skill in the art to have modified Abrams et al. and Kubota et al. with a marker and sensor to easily navigate the instrument through the body to the correct location. It is also well-known in the art to provide scales on devices in order to determine the position of the device.

Examples of such scales are depth-locators on cutters, syringes, and stereotaxic devices. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Abrams with a scale in order to determine the position of the instrument relative to the stabilizer. As is recited in the claims, the device could possibly perform several function but, as a result of using the phrase *can be*, the device does not necessarily have to perform those functions.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 62, 66-69, 78, and 81-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrams et al. (U.S. Patent No. 6,740,098). Abrams et al. disclose the invention substantially as claimed including one or more suction nozzles being in the axial direction but are silent on any other directions they could be in. However, it would be obvious to one having ordinary skill in the art to change the shape of the nozzles to being in a radially outward, radially inward, or obliquely outwards direction with respect to the loop shape since no unpredictable outcome would ensue. It is well-known in the art to add sensors and markers to medical instruments in order to provide for an additional guide, or navigation means, to locate the instrument within the body. Therefore, it would have also been obvious to one having ordinary skill in the art to have modified Abrams et al. with a marker and sensor to easily navigate the instrument

through the body to the correct location. It is also well-known in the art to provide scales on devices in order to determine the position of the device. Examples of such scales are depth-locators on cutters, syringes, and stereotaxic devices. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Abrams with a scale in order to determine the position of the instrument relative to the stabilizer. As is recited in the claims, the device could possibly perform several function but, as a result of using the phrase *can be*, the device does not necessarily have to perform those functions.

Response to Arguments

Applicant's arguments with respect to claims 59-84 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTINA D. GETTMAN whose telephone number is (571)272-3128. The examiner can normally be reached on Monday-Thursday 6:45 am to 4:30 pm (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3731

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christina D Gettman/
Examiner, Art Unit 3734
571-272-3128

**/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3731**